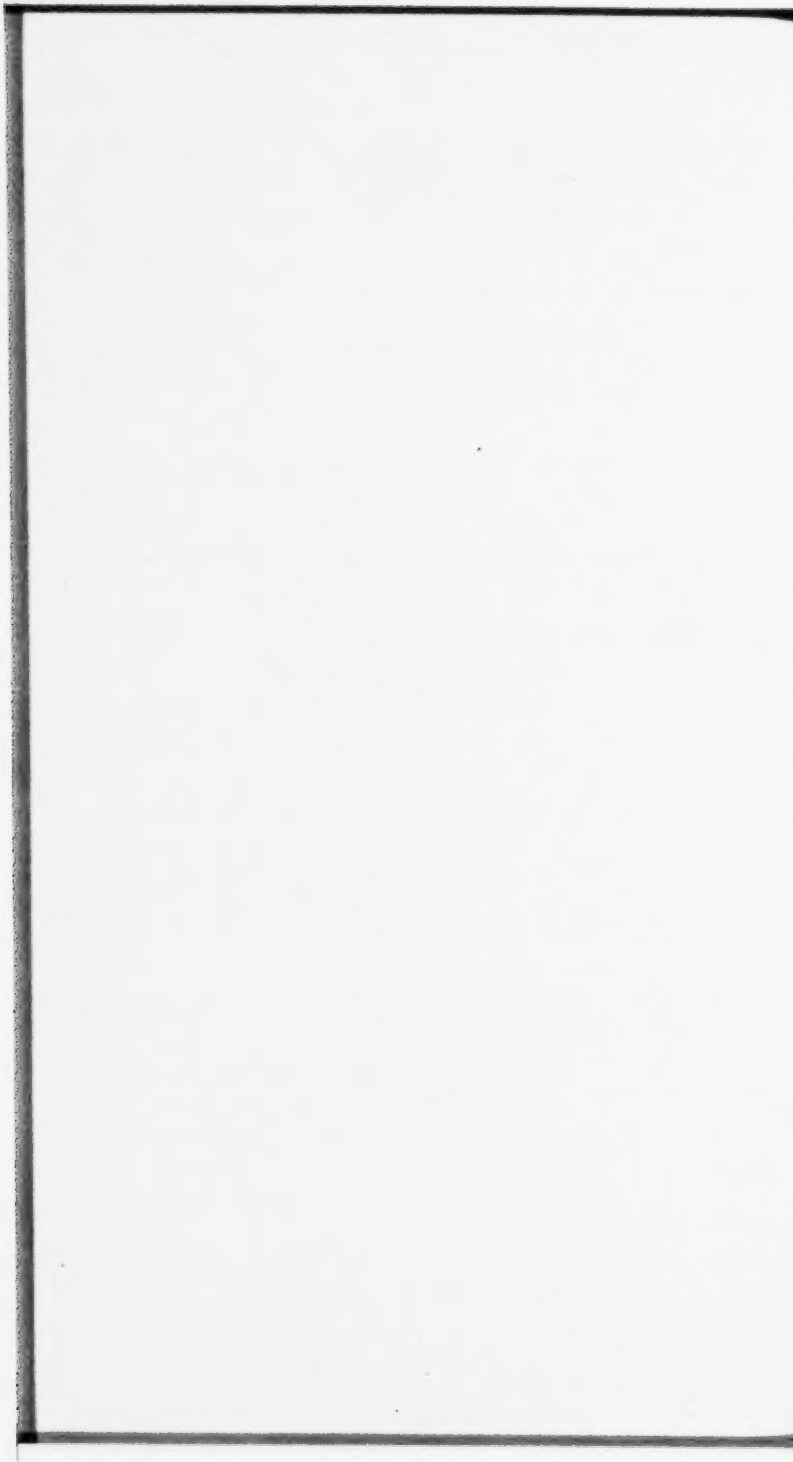

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IN THE SUPREME COURT OF THE UNITED STATES

TAGG BROS. & MOORHEAD,
A Corporation, et al.,
*Appellants,*

vs.

THE UNITED STATES OF AMERICA, et al.,
*Appellees.*

October Term 1928
No. 45

# STATEMENT OF JURISDICTION

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.**

JAMES M. BECK,
FRANCIS A. BROGAN,
ALFRED G. ELLICK,
ANAN RAYMOND,
*Attorneys for Appellants.*

THE COCKLE PRINTING CO., LAW BRIEFS, OMAHA, NEB.

# IN THE SUPREME COURT OF THE UNITED STATES

TAGG BROS. & MOORHEAD,
A Corporation, et al.,
*Appellants,*

vs.

THE UNITED STATES OF AMERICA, et al.,
*Appellees.*

October Term 1928

No. 738

## APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

### STATEMENT OF JURISDICTION.

Plaintiffs and appellants, market agencies registered under the Packers and Stock Yards Act of August 15th, 1921, (Chapter 64, 42 Statutes at Large 165; U. S. C. 1925, Title 7, Chapter 9), at Omaha, Nebraska, filed in the District Court of the United States for the District of Nebraska a bill in equity against the United States of America, the Secretary of Agriculture, the Attorney General and the United States District Attorney for the District of Nebraska, to enjoin the enforcement by the defendants of an order of the Secretary of Agriculture made

November 19th, 1926, fixing maximum rates to be charged by the plaintiffs for their personal services in the buying and selling of livestock on commission. There was a final decree dismissing the bill and plaintiffs have appealed.

The jurisdiction of this court over the appeal is sustained by Section 316 of the Packers and Stock Yards Act (U. S. C. Title 7, Sec. 217), making applicable to such proceedings the procedure provided in the Act of October 22, 1913 (38 Statutes at Large 208, 219, 220, Chapter 32, C. C. Section 3279, 2 Fed. Statutes Annotated Second Edition Page 169, U. S. C. Title 28, Sec. 45), for suits for injunction against the orders of the interstate commerce commission. These provisions are incorporated in Subsection 5, Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (43 Statutes at Large, Chapter 229, Page 936; U. S. C. Title 28, Sec. 345).

The judgment sought to be reviewed herein is dated December 31st, 1928, (Record p. 121). The application for the appeal was presented January 2, 1929, (Record pp. 132-5).

The nature of the case and rulings below were such as to bring the case within the jurisdictional provisions relied upon. From the amended petition (Record pp. 1-12), it appears that plaintiffs sought to enjoin the enforcement of the order made by the Secretary of Agriculture for reasons which may be briefly stated as follows:

1. The Packers and Stock Yards Act of 1921, in so far as it attempts to confer upon the Secretary of

Agriculture the power to regulate and fix the charges made by live stock commission salesmen for their personal services is contrary to the Fifth Amendment to the Constitution of the United States, in that it seeks to deprive them of their liberty and property without due process of law.

2. The order sought to be enjoined is void, in that the Packers and Stock Yards Act gives the Secretary no power to issue an order to market agencies, such as appellants.

3. The findings and order of the Secretary, promulgating a new rate, were beyond the scope of the inquiry before the Secretary, as defined by the original notice thereof.

4. The order sought to be enjoined violates the provisions of the Fifth Amendment, depriving petitioners of their property without due process of law, in that it is manifestly unjust and unreasonable and provides for a confiscatory and noncompensatory schedule of rates and charges.

The answer and amendment thereto, (Record pp. 56-62-63) brought in issue these contentions of the plaintiffs and appellants. The opinion of the trial court, (Record pp. 101-20), was adverse thereto, and the final decree (Record p. 121) dismissed the bill of the plaintiffs and appellants and denied the injunctive relief sought. The contentions of appellants as originally made in the pleadings were preserved by the assignment of errors filed upon appeal to this Court, (Record p. 123).

The jurisdiction is sustained by the opinion of this Court in *Stafford v. Wallace,* 258 U. S. 495, where the procedure was identical with that followed in this case, and wherein this Court said:

> "Section 316 of the Packers and Stockyards Act of 1921 makes applicable to suits for injunction against the orders of the Secretary of Agriculture the same procedure, original and appellate, provided in the Act of October 22, 1913 (38 Stat. At L. 208, 219, 220, Chap. 32, Comp. Stat. Sec. 3279, 2 Fed. Stat. Anno. 2d ed. p. 169), for suits for injunction against the orders of the Interstate Commerce Commission. The latter act gives a right to a direct appeal to this court from the granting or refusing an interlocutory injunction. Hence the appeals herein are properly prosecuted."

Respectfully submitted,

JAMES M. BECK,
FRANCIS A. BROGAN,
ALFRED G. ELLICK,
ANAN RAYMOND,

*Attorneys for Appellants.*